the first,—*Endriss* v. *Belle Isle Ice Co.*, 49 Mich. 279. New York has followed the general rule in the later cases,—*Weed* v. *Spears*, 193 N. Y. 289; *Kuhmarker Mfg. Co.* v. *Hills*, 146 N. Y. Supp. 1013; and professes to follow it in the principal case. The New York courts would not admit the competency of the second agreement impliedly to rescind the first,—*Obrentz* v. *Wesenfeld*, 103 N. Y. Misc. 664 (dictum), and principal case; nor would it recognize a consideration in the second without a rescission of the first. *Vanderbilt* v. *Schreyer*, 91 N. Y. 392; *Obrentz* v. *Wesenfeld*, 103 N. Y. Misc. 664; *Price* v. *Press Pub. Co.*, 117 N. Y. App. Div. 854. But the court says that although a rescission of the first contract is necessary to the finding of a legal consideration in the second, yet it matters not whether such rescission is before or at the time of the making of the second agreement, so long as it is express. It may, perhaps, be granted that a logical basis for finding consideration would exist by virtue of this "simultaneous rescission," in that promisee accepted a new contract in place of the old one, which might be construed as legal detriment. But on broad policy there would seem to be a weakness in the reasoning which found a legal detriment in the substitution of a right to $125 per month for a right to $90 per month, and that in essence is what it amounted to. *Lingenfelder* v. *Wainwright Brewing Co.*, 103 Mo. 578. Professor Williston, in his work on Contracts, gives what would seem to be the best rule. To find a consideration in these cases he would require that there be a moment of time when both parties are freed of their obligations under the first contract, so that each of them could refuse to enter into any bargain whatever relating to the same subject matter; for unless such a moment of time elapse, the total effect of the second transaction is that one party promises to do exactly what he is already contractually bound to do, and the other party promises to give an additional compensation or bonus therefor. WILLISTON ON CONTRACTS, Sec. 130.

CONTRACTS—CONSIDERATION—ILLUSORY PROMISE.—The plaintiff, a jobber, desiring glue for resale only, contracted with the defendant, a glue manufacturer, to supply the plaintiff's "requirements" of a certain quality of glue for one year. In a suit for failure to supply, it was *held*, that the contract was void for lack of mutuality. *Oscar Schlegel Mfg. Co.* v. *Peter Cooper's Glue Factory*, (N. Y., 1921), 132 N. E. 148.

In such cases the mutuality of consideration depends on the meaning given the word "requirements," the court in the principal case interpreting it as "that which is demanded." Thus, it was pointed out that the plaintiff had not obligated itself to do more than what it wanted to do. A similar result was reached where the plaintiff, a foundry concern, contracted with the defendant to supply all the pig iron "wanted" by plaintiff in its business. *Bailey et al.* v. *Austrian*, 19 Minn. 535. On the other hand, where the vendee was engaged in a business requiring the article contracted for, the contract has often been upheld on another interpretation of "requirements," viz., express or implied promises to take what was actually needed in the business. *Wells* v. *Alexandre*, 130 N. Y. 642; *E. G. Dailey Co.* v. *Clark Can Co.*, 128

Mich. 591; *Minn. Lumber Co.* v. *The Whitebreast Coal Co.*, 160 Ill. 85; *Nat. Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill. 427; *Manhattan Oil Co.* v. *Richardson Lubricating Co.*, 113 Fed. 923; *Jenkins & Co.* v. *Anaheim Sugar Co.*, 247 Fed. 958, noted in 15 MICH. L. REV. 441; *Wood* v. *Duff-Gordon*, 222 N. Y. 88. As to the quantity which the vendee may require from the vendor, some courts have allowed increases over the usual demands when such increases were within the "legitimate requirements of the business." *E. G. Dailey Co.* v. *Clark Can Co., supra; N. Y. Cent. Iron Works Co.* v. *U. S. Radiator Co.*, 174 N. Y. 331. In the last case the court denied that the vendee should be allowed to use the contract in a speculative manner, asserting that the increase should be for the "ordinary and regular business purposes." At the same time, it was admitted that the "*needs* of the vendee could be indefinitely enlarged when the market was in such a condition as to enable it to undersell its competitors because of the favorable contract with the vendor." Just where the line should be drawn depends largely on the circumstances of each case, and certainly in the principal case the court arrived at an equitable result, though not proceeding on the grounds of certain other courts. For further discussion of this problem, see 18 MICH. L. REV. 409.

CONTRACTS—ILLEGALITY—RIGHTS OF INNOCENT PROMISEE.—An order promulgated under the Defense of the Realm Act prohibited the purchase and sale of linseed oil by one who had not procured a license. P, who had a license, contracted to sell linseed oil to D, being induced to do so through D's false representations to the effect that he (D) also had a license. In an action by P to recover the amount of an award of damages for breach of contract, made by arbitrators, *held*, that the contract was illegal and that no claim under it could be enforced by anyone in a court of law. *Mahmoud and Ispahani, In re*, [1921], 2 K. B. 716.

While it is often said that an illegal contract is void, it may well be doubted whether this statement is strictly accurate. It would seem to be more nearly correct to say that such a contract is unenforcible at the suit of one who participated in the wrongdoing. Lord Mansfield put the matter thus:

> "The principle of public policy is this: *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." *Holman* v. *Johnson*, Cowp. 341, 343.

To the same effect, see *Gibbs & Sterrett Mfg. Co.* v. *Brucker*, 111 U. S. 597. That a promisee who is justifiably innocent may recover damages for breach of an agreement that is illegal on grounds of public policy has frequently been decided. *Millward* v. *Littlewood*, 5 Ex. 775; *Kelley* v. *Riley*, 106 Mass. 339; *Waddell* v. *Wallace*, 32 Okla. 140; *Carter* v. *Rinker*, 174 Fed. 882; *Musson* v. *Fales*, 16 Mass. 331. No reason is apparent why the same rule should not be applied in the case of an agreement made illegal by statute in the